

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ADP-00 SCA-01 JUSE-00 SS-15 NSC-10

CIAE-00 DODE-00 INR-10 NSAE-00 PA-03 RSC-01 USIA-12

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P 210154 Z MAY 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 5352

C O N F I D E N T I A L MANILA 5840

FOR L/ M/ SCA - MALMBORG FROM PFUND

E O 11652: GDS

TAGS: PFOR, RP

SUBJ: EXTRADITION TREATY

REF: STATE 091385

1. DURING MAY 20 DISCUSSION OF MAY 14 DRAFT TREATY WITH EMBASSY REPS, SEVERAL QUESTIONS AROSE IN CONTEXT OF GOP INTEREST IN POSSIBLE EXTRADITION OF ALLEGED ASSASSINATION PLOTTERS LOCATED IN U. S. ANSWERS BY OPENING BUSINESS MAY 22 WOULD BE HELPFUL.

A. IF OVERT ACT TO ESTABLISH CONTINUING OFFENSE (SUCH AS PROVISION OF FUNDS TO CONSPIRATORS) WERE COMMITTED IN OR FROM U. S. AND NOT WITHIN PHILIPPINES BY U. S. OR PHIL NATIONAL NOW LOCATED IN U. S., WOULD ACT MAKE PERPETRATOR SUBJECT TO EXTRADITION RE CONSPIRACY, OR WOULD CRITERION OF ARTICLE 3(2) OF MAY 14 DRAFT PRECLUDE EXTRADITION? RE THAT CRITERION, IF U. S. OR FOREIGN NATIONAL PERFORMED OVERT ACT OUTSIDE U. S. IN CONNECTION WITH CONSPIRACY AGAINST LIFE OF U. S. PRESIDENT, WOULD HE BE SUBJECT TO U. S. CRIMINAL PROSECUTION FOR THAT CONSPIRACY?

B. RE ARTICLE 6 B OF MAY 14 DRAFT, CHANGES WERE MADE TO SPANISH TREATY EQUIVALENT LANGUAGE (ARTICLE VB) IN VIEW UNCERTAIN SCOPE AND MEANING OF UNCONSUMMATED ATTEMPT AGAINST LIFE. GOP LIKELY TO CON-
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SIDER THIS CHANGE AS AFFECTING THEIR PRIMARY CURRENT INTEREST IN US/ PHIL EXTRADITION TREATY, I. E., THEIR CHANCES OF OBTAINING EXTRADITION OF U. S. NATIONALS TRACTMAN AND PINCUS. IT IS OUR UNDERSTANDING THAT ARTICLE 6 B OF MAY 14 DRAFT WOULD REMOVE POLITICAL OFFENSES DEFENSE ONLY RE PERPETRATOR OF ASSASSINATION OR ACTUAL ATTEMPT TO ASSASSINATE, BUT NOT RE PERSONS INVOLVED IN MERE CONSPIRACY

OR PLOT TO ASSASSINATE NOT ACTUALLY CULMINATING IN ASSASSINATION OR ATTEMPT ITSELF. IN VIEW LIKELY GOP INTEREST IN RETAINING LANGUAGE OF ARTICLE VB OF US/ SPANISH TREATY TEXT, REQUEST DEPARTMENT VIEW WHETHER THAT FORMULATION IS CONSIDERED TO EXCLUDE FROM POLITICAL OFFENSES EXCEPTION ALSO MERE CONSPIRACY TO ASSASSINATE, I. E. NON-CONSUMMATED ATTEMPT, OR WHETHER EXCLUSION IS LIMITED ONLY TO ASSASSINATION AND ATTEMPT TO ASSASSINATE. IN VIEW FACT THAT ASSASSINATION OR ATTEMPT REQUIRES OCCURRENCE OF EVENT RELATIVELY OBJECTIVELY ESTABLISHABLE, AS OPPOSED TO GREATER UNCERTAINTY WHETHER CONSPIRACY EXISTED THAT NEVER RESULTED IN ATTEMPTED OR ACTUAL ASSASSINATION, ASSUME USG PURPOSE IN SPANISH TREATY WAS TO LEAVE POLITICAL OFFENSE EXCEPTION AVAILABLE TO ALLEGED CONSPIRATOR AS CONTRASTED TO PERPETRATOR; IF THIS SO, WE PROPOSE, IF PRESSED TO DO SO, TO AGREE TO LANGUAGE OF ARTICLE VB OF SPANISH TREATY BUT WITH THIS EXPLANATION.
BYROADE

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